1950.

File No. O. Judicial Committee (Integrated States) 1/50

Legal Department

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Subject:— Opinions under the Judicial Committee (Integrated States) Order, 1949.

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File No. O. Judicial Committee/50 (Integrated States)

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C O N T E N T S.

Legal Department File No. O. Judicial Committee
Intergrated State / 1950

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2).	O.n. 11552 17-10-49	Review from the decisions given by the Huzur Nyaya Sabha is not provided for anywhere else in Law and Govt. of Bombay cannot exercise any powers under and 37 of Baroda Privy Council Rules which is no longer operative.	3 -

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Office of the R.L.A.

The question involved in the present case has already been examined by the R.L.A. when he recorded his opinion on a similar petition presented by Shri Chhatrapati last year. The opinion was forwarded to the Special Officer, P. & S.D. under No. 11552 dated 17-10-49. In that opinion it has been held that rule 37 of the Baroda Privy Council Rules in no longer operative and that the Judicial Committee (Integrated States) Order, 1949 contains no provision for review of decisions given by the Husur Nyaya Sabha i.e. the Privy Council of Baroda.

Attention of the P & S Department is invited to the said opinion and it is suggested that a suitable reply may be sent to the petitioner on the lines indicated in paragraph 4 of thereof.

P.M.Lad

26-5

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 6907 dated 22nd May 1950

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Legal Department.

This is an application for leave to seek review of the decision alleged to have been given on the 9th of May 1949 by the Huzur Nyaya Sabha of Baroda. Mr. Chhatrapati's contention is that after the 1st of May 1949, the Huzur Nyaya Sabha had ceased to function and that, therefore, the order passed by the Huzur Nyaya Sabha is ultra vires and without jurisdiction He wishes to agitate that point before the Judicial Committee for intergrated States set up under .. and seeks leave for that purpose. The leave is sought under rule 37 of the Privy Council Rules of Baroda.

2. By notification No. 4530/46-F dated 1st May 1949 the provisions of the Government of Baroda Act (Act VI of 1940) except sections 1, 2 and 36 to 45 (both inclusive) were repealed with effect from 1st May 1949. The result was that section 46 of the Government of Baroda Act, which deals with Huzur Nyaya Sabha, cameto be repealed and was no longer law. I am given to understand that in consequence of Huzur Nyaya Sabha in fact ceased to hear any matter after 30th April 1949, and that all final orders of the Rules upon the advice tendered by the Huzur Nyaya Sabha prior to that date were also passed before the 1st of May 1949. Thepapers which Mr. Chhatrapati has produced show that the formal order was passed on the 9th May 1949; but that order itself shows that it is made in accordance with the orders of Government, which means that the Ruler's order upon the advice of the Huzur Nyaya Sabha must have been passed before the 1st May 1949, and the mere ministerial act of a formal expression of that order was done on the 9th May. In that view, there would really be no substance in Mr. Chhatrapati's main contention that the Huzur Na Nyaya Sabha passed an order

without jurisdiction; and there is really no scope for review.

3. Assuming that the Huzur Nyaya Sabha heard the matter and disposed it of on the 9th May 1949, i.e. after it had ceased to have any jurisdiction, thenext question which arises for consideration is whether it is competent now to the Governmentof Bombay to grant leave to such review in accordance with the provision of rule 37 of the Baroda Privy Council Rules. These Rules are made under clause (p) of section 52 of the Government of Baroda Act, which provides for rules regulating the procedure regarding the filing of appeals and revisional applications and the business of the Huzur Nyaya Sabha. Section 52 stood repealed on thelst May 1949, andso too did section 46. There is no saving clause in the notifieation No. 4350/46-F dated 1st May 1949, and none was indeed needed. The Huzur Nyaya Sabha ceased to exist, and it follows that all Rules pertaining to the business of the Huzur Nyaya Sabha automatically ceased to have any force. After the 1st of May 1949, there was no question of any review from the decision of the Huzur Nyaya Sabha as the ruler himself ceased to exercise jurisdiction, and there was no authority competent to review the decision of the Huzur Nyaya Sabha. Later on when the Judicial Committee was established, no provision was made for review of decisions given by the Huzur Nyaya Sabha in the past. The consequence is that, today a review from the decision of the Huzur Nyaya Sabha is not provided for anywhere in Law, and the Government of Bombay cannot, therefore, exercise any powers under rule 37, which is no longer operative.

Mr. Chhatrapati's contention that the case falls within the scope of section 4 of the Baroda State Order dated 1st May 1949 is not correct. What that section purports to do is to save laws including rules in so far as they were not altered, repealed or amended by an order under the Extra-Provincial Jurisdiction Act, 1947, and for purpose of construing laws so saved, the reference to the Ruler of Baroda shall be construed as reference to the Provincial Government. Section 46 of the Government of Baroda Act having been repealed and so too the Rules made 22/

under clause (p) of section 52 of that Act, ~~the~~ question of the Government of Bombay exercising any po ers of the Ruler under that rule does not arise.

4. Mr. Chhatrapati may, therefore, be informed that both on merits and in law, there is no scope for granting permission t to seek a review fr from the decision of the Huzur Nyaya Sabha in this case.

Sd/- P.M.Lad

Mr. Tukol may please see this and bring this up on Monday at Bombay.

No. 1152
d/- 17-10-1949.

S.C: 22/6
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